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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

JAMIESON BROWN, Plaintiff and Appellant, v. COURTYARD PARTNERS-PALM SPRINGS, L.P. et al., Defendants and Respondents.	E063343 (Super.Ct.No. PSC1405424) OPINION

APPEAL from the Superior Court of Riverside County. David M. Chapman, Judge. Affirmed.

Jamieson Brown, in pro. per.; Law Offices of Ermila A. Martinez and Ermila A. Martinez, for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

I

INTRODUCTION

Appellant and plaintiff Jamieson Brown, who submitted his brief in propria persona but now is represented, appeals from a judgment against him, ordering costs to

defendants[1] in the amount of $2,508.98.[2] We hold the trial court properly granted the judgment and costs in favor of defendants. We affirm.

II

FACTUAL AND PROCEDURAL BACKGROUND

In October 2014, Brown filed a complaint alleging 14 causes of action against defendants, the landlord and its property managers. On December 2, 2013, Brown had leased a two-bedroom apartment. Brown alleges that, beginning in April 2014, he realized the air conditioning was not functioning properly and the apartment could not be cooled below 88 degrees in spite of the landlord's repair efforts.

On October 2, 2014, Brown was notified of a rent increase from $895 monthly to $990 or $1,050 monthly, effective December 1, 2014. In October 2014, Brown and defendants had numerous exchanges about the proposed rent increase and the ongoing air conditioning problems. On October 14, 2014, Brown filed his complaint seeking damages for breach of a written lease, breach of implied warranties, breach of the implied covenant of good faith and fair dealing, nuisance, unfair business practices, conspiracy, trespass, invasion of privacy, abuse of process, false advertising, declaratory and injunctive relief, and appointment of a receiver.

Defendants demurred to the complaint for failure to state claim. In particular, they

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[1] Courtyard Partners-Palm Springs, L.P, a California limited partnership; U.S. Residential Group, a Texas limited liability company; Michael Edward McGreal; Kelly Leanne Tesso, also known as Kelly Leanne Smith; and Ellen Lynn King.

[2] No respondents' brief has been filed.

asserted that lack of air conditioning does not violate housing codes or render the premises unfit for use.

The parties stipulated to continue the demurrer hearing date from December 2014 to January 2015. Brown did not file opposition and did not appear at the January 2015 hearing. Hence the trial court sustained the demurrer without leave to amend on January 21, 2015. A notice of ruling was filed on January 22, 2015. According to the register of actions, on January 27, 2015, the court corrected, nunc pro tunc, the minute order of January 21, 2015, by dismissing defendants with prejudice and giving Brown notice by mail. As we discuss below, Brown interprets the meaning and effect of these rulings and orders differently than we do.

On January 22, 2015, defendants filed a memorandum of costs totaling $2,508.98, which was served on Brown by mail. On January 26, 2015, Brown filed a notice of related case, PSC1406636.[3] The record does not show that Brown ever responded to the cost memorandum.

On February 13, 2015, defendants served Brown by mail with a proposed judgment, including costs of $2,508.98. On February 20, 2015, the court entered the judgment in favor of defendants, including the requested costs.

Brown filed a notice of appeal of the judgment on March 30, 2015. As we state in our order of June 5, 2015, "this appeal shall proceed only as to the February 20, 2015, judgment awarding costs of $2,508.98."

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[3] Apparently this was an unlawful detainer action against Brown.

III

DISCUSSION

Brown argues the court erred by entering judgment and costs without having entered an underlying dismissal of the named defendants, citing *Boonyarit v. Payless Shoesource, Inc.* (2006) 145 Cal.App.4th 1188, 1192. We disagree, however, because the record shows—and Brown admits—the clerk dismissed all defendants on January 21, 2015 (corrected nunc pro tunc on January 27, 2015), when the court sustained defendants' unopposed demurrer without leave to amend. *Boonyarit* does not apply because, in this case, a dismissal was entered before the judgment. (*Fries v. Rite Aid Corp.* (2009) 173 Cal.App.4th 182, 186.)

Based on his characterization of the language in the court's minute order and the register of actions, Brown tries to argue the court only dismissed the unnamed agency defendants,[4] not the named defendants, whereas the clerk dismissed all defendants. However, the deferential standard of review requires us to uphold the judgment if based on substantial evidence: "'"The standard of review on issues of attorney's fees and costs is abuse of discretion. The trial court's decision will only be disturbed when there is no substantial evidence to support the trial court's findings or when there has been a miscarriage of justice. If the trial court has made no findings, the reviewing court will infer all findings necessary to support the judgment and then examine the record to see if the findings are based on substantial evidence." [Citation.]' (*Frei v. Davey* (2004) 124

[4] "Defendant AND . . . AGENTS SERVANTS AND EMPLOYEES."

Cal.App.4th 1506, 1512.)" (*Pellegrino v. Robert Half Internat., Inc.* (2010) 182 Cal.App.4th 278, 287-288.) In our view, the record demonstrates the court dismissed all defendants on January 21, 2015, as memorialized by the minute orders and the register of action.

We further conclude substantial evidence supports the judgment, including costs. The cost memorandum was filed on January 22, 2015, one day after the court ruled on the demurrer and dismissed defendants on January 21, 2015. It is utterly implausible that the court meant to dismiss only the agency defendants and not the named defendants who had prevailed on the demurrer. The judgment was not entered until February 20, 2015. Between January 21 and February 20, 2015, Brown took no action to challenge the ruling on the demurrer, the cost memorandum, or the judgment.

The time limitation within which a memorandum of costs must be filed does not constitute a matter of jurisdiction; rather, it is directed to the sound discretion of the court. (*Le Deit v. Ehlert* (1962) 205 Cal.App.2d 154, 170.) California Rules of Court, rule 3.100 requires a memorandum of costs to be filed within 15 days after the date of mailing of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5, or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first. A dismissal is entered when it is entered in the clerk's register; it is thereafter effective for all purposes. (*Boonyarit v. Payless Shoesource, Inc., supra,* 145 Cal.App.4th at p. 1192.) Entry of a judgment is not required. (*Fries v. Rite Aid Corp., supra,* 173 Cal.App.4th at pp. 183, 188.) Defendants filed the cost memorandum after the court dismissed them and before

entry of judgment.

Based on the record, we hold there is substantial evidence that the court dismissed defendants on January 21, 2015. The cost memorandum was timely filed on January 22, 2015, after defendants were dismissed. Under these circumstances, even if the cost memorandum preceded the judgment, the court did not abuse its discretion in granting costs as part of the judgment entered against Brown.

Brown's other two arguments regarding the determination of costs and the amount of interest on the judgment were not raised below because Brown did not challenge the cost memorandum or the judgment. In view of our resolution of the appeal holding the judgment was properly entered, we need not discuss defendant's remaining contentions.

IV

DISPOSITION

We affirm the judgment. In the interests of justice, each party shall bear its costs on appeal.

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CODRINGTON
J.

We concur:

HOLLENHORST
Acting P. J.

SLOUGH
J.